

E-FILED on 6/26/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FAMILY MORTGAGE CORPORATION
NO. 15,

Plaintiff,

v.

PERRY L. GREINER,

Defendant.

No. C-03-01380 RMW

ORDER DENYING MOTION FOR STAY

[Re Docket No. 154]

On June 5, 2006, defendant Perry L. Greiner moved¹ this court to stay enforcement of its order enforcing the settlement agreement between the parties. The motion is denied.

Equitable principles do not support a stay here.² While Greiner may suffer harm if this court


¹ Greiner's attorneys apparently have not acted on two notices from the clerk instructing them to register in the court's electronic filing program. See docket nos. 117, 145. Compliance is required by General Order 45, which deals with electronic filing.

² The factors relevant to a district court's decision to stay an order pending an appeal are similar to those for granting a preliminary injunction. See *Sec. Investor Prot. Corp. v. Blinder, Robinson & Co., Inc.*, 962 F.2d 960, 968 (10th Cir. 1992); *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 842 n.1 (D.C. Cir. 1977); see also *Lopez v. Heckler*, 713 F.2d 1432, (9th Cir. 1983) (standard applied by Ninth Circuit itself to evaluate requests for "stays pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction"); *United States v. Baylor Univ. Med. Ctr.*, 711 F.2d 38, 39 (5th Cir. 1983) (*per curiam*) (similar). To be granted a stay, a movant must show "(1) its strong position on the merits of the appeal; (2) irreparable injury if the stay was denied; (3) that a stay would not substantially harm other parties to the litigation; and (4) that the public interests favor a stay." *Securities Investor*, 962 F.2d at 968.

1 has erroneously enforced the settlement agreement, the court believes Greiner's appeal to be without
2 merit. No public interest favors Greiner. Most importantly, however, Greiner has consistently
3 pursued a strategy of delay with respect to the loan at issue here, seeking neither to cure his default
4 on the loan nor make good on his obligations to relinquish control of the sale of the property. In
5 light of this, Family Mortgage and Eastern Saving Bank should be allowed to proceed with the
6 remedy given them by the court.

7 Greiner's motion for a stay is denied.

8
9
10 DATED: 6/26/06



RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been electronically sent to:**

2 **Counsel for Plaintiff:**

3 Mark V. Isola misola@rehonroberts.com
4 Peter M. Rehon prehon@rehonroberts.com
5 Tiffany L. Goodman
6 Tyler J. Olson tolson@rehonroberts.com

7 Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program.

8 **A copy will also be mailed to:**

9 Stanford H. Atwood, Jr.; Eric S. Haiman
10 Atwood Haiman & Westerberg
11 18805 Cox Ave., Suite 200
12 Saratoga, CA 95070-4183

13 **Dated:** 6/26/06 /s/ JH
14 **Chambers of Judge Whyte**